ILE COPY

Docket No. [redacted] 112

Office-Supreme Court, U.S.
FILED
AUG 13 1959
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

WILLIAM HARPOLE, Superintendent of the Mississippi State Penitentiary, Parchman, Mississippi ..... Petitioner

versus

UNITED STATES OF AMERICA, ex rel., ROBERT LEE GOLDSBY ..... Respondent

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF OF PETITIONER

JOE T. PATTERSON
Attorney General of Mississippi
New Capitol Building
Jackson, Mississippi

J. R. GRIFFIN
Assistant Attorney General
New Capitol Building
Jackson, Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General
New Capitol Building
Jackson, Mississippi

BARNETT, Jones & MONTGOMERY
414½ E. Capitol St.
Jackson, Mississippi
Of Counsel

ROSS R. BARNETT
414½ E. Capitol Street
Jackson, Mississippi
Attorneys for Petitioner

INDEX

	Page
Statement	1
Argument	2

TABLE OF CITATIONS

Cases:

Eubanks v. Louisiana, 1958, 356 U. S. 584	3, 4, 5
Norris v. Alabama, 1935, 294 U. S. 587	3, 5
Rice v. Sioux City Park Memorial Cemetery, 1955, 349 U. S. 70	2, 3
Strauder v. West Virginia, 1880, 100 U. S. 303	3, 4

Other Authorities:

Mississippi Code of 1942, Recompiled, Section 3163	2
Mississippi Constitution of 1890, Section 243, as Amended	2
Rule 19, Revised Rules of the Supreme Court of the United States	2, 3

Docket No. 997

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

WILLIAM HARPOLE, Superintendent of the Mississippi State Penitentiary, Parchman, Mississippi ..... Petitioner

versus

UNITED STATES OF AMERICA, ex rel., ROBERT LEE GOLDSBY ..... Respondent

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF OF PETITIONER

STATEMENT

This brief is in reply to the brief for respondent in opposition filed herein, a copy of which was received by counsel for petitioner on July 16, 1959.

In respondent's brief in opposition filed herein, the first paragraph under "Statement" concludes thus: "Negroes in Carroll County . . . paid taxes."

We submit by way of clarification, however, that the record fails to reveal that any Negroes in Carroll County paid the requisite poll taxes required of them in order to become qualified electors or qualified jurors. No matter how much property they may own or what amount of taxes they may pay, all citizens of the State of Mis-

sissippi, except persons over the age of 60 years or persons who are deaf and dumb or blind or maimed by loss of hand or foot, are required by law to pay poll taxes before they are entitled to be qualified electors—this being a prerequisite to becoming qualified jurors. Section 243, Mississippi Constitution of 1890, as amended. All persons who are exempt from the payment of poll taxes as aforesaid are required to secure exemption certificates before they are eligible to vote. Section 3163, Mississippi Code of 1942, Recompiled. In the instant case, the fact is that no Negroes in Carroll County had paid the requisite poll taxes required of them in order to become qualified jurors at the time of respondent's indictment or trial. Nor was there any proof that any members of the Negro race had received or had even applied for exemption certificates.

ARGUMENT

Respondent argues on page 4 of his said brief that the petitioner has been unable to make a case which presents "special and important reasons" for grant of review by certiorari. Respondent cites *Rice v. Sioux City Park Memorial Cemetery,* 1955, 349 U. S. 70, in support of this contention.

We have but to refer the Court to said case cited by respondent to completely refute his contention aforesaid. The Court's opinion in the *Rice* case refers to Rule 19, Revised Rules of this Court, where it is stated that certiorari will be granted "only where there are special and important reasons therefor." Said Rule 19 then lists the following to indicate the character of instances where certiorari will be granted: "19 (1) (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in

a way in conflict with applicable state or territorial law; . . . or has decided a federal question in a way in conflict with applicable decisions of this court; . . .'' As has been shown in petitioner's petition for writ of certiorari filed herein and as will be hereinafter further elaborated upon, all of the three reasons quoted from said Rule 19 (1) (b) are applicable to the case at bar. In line with the language used by this Court in the *Rice* case, the questions here presented are federal questions ''of substance'', reach to a problem beyond the academic or episodic, and state ''special and important reasons'' for granting certiorari.

Replying to the argument appearing on page 5 of respondent's said opposition brief to the effect that the petition presents no important question of federal law requiring decision by this Court, we submit that we can conceive of no more clear-cut example of an important question of federal law requiring decision by this Court than that which is posed in this case. For here, the Court of Appeals has declared unconstitutional a conviction of murder on the ground that Negroes were systematically excluded from juries in Carroll County—despite the fact that there were at the time of said trial no Negroes qualified for jury service. Thus, in view of the facts of this case, the questions stated on pages 3 and 4 of the petition are important questions of federal law requiring decision by this Court.

On pages 5 and 6 of his said brief, respondent refers to the language of the Court of Appeals (App. A, p. 66 of Petition) confirming the validity of the constitutional principle involved in the cases of *Norris v. Alabama*, 1935, 294 U. S. 587, 589, *Strauder v. West Virginia*, 1880, 100 U. S. 303, and *Eubanks v. Louisiana*, 1958, 356 U. S. 584, and the cases involving the same principle decided be-

tween the dates of the decisions of said two cases last mentioned.

Neither did we in our petition, nor do we here, propose to take issue with the law as applied to the facts in those cases mentioned. Rather we submit that the facts of those cases are vastly different and readily distinguishable from the facts of the case at bar.

In *Strauder, supra,* this Court was called upon to pass upon a West Virginia statute which explicitly on its face denied to Negroes the right to serve as jurors. There this Court held that a state may prescribe the qualifications of its jurors and in so doing make discriminations, stating in part (p. 310):

> "It [a state] may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the 14th Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color."

In line with said decision of this Court, the State of Mississippi has prescribed lawful, non-discriminatory requirements with which *all* of its citizens, regardless of race or color, must comply before being eligible for jury service.

In *Eubanks, supra,* (pp. 586, 587) while the proof showed that Negroes comprised about one-third of the population of the parish, and that only one Negro (and he apparently through mistake) had been picked for grand jury duty within memory, the "[u]ndisputed testimony also proved that a substantial number of the large Negro population in the parish were educated, registered to

vote and possessed the qualifications required for jury service."

Also, in the *Norris* case, as well as in the other cases relied upon by the Court of Appeals for holding that Goldsby had been denied his constitutional rights by virtue of an unlawful systematic exclusion of Negroes from jury service, we find the same fact as was present in the Eubanks case. In each of said cases, the proof showed that there were Negroes within the county or parish who were qualified jurors but that they had been systematically excluded from jury service.

Thus it is readily evident that the facts of the instant case are vastly different from the *Eubanks* case and the other cases cited in the opinion of the Court of Appeals.

In the instant case, no Negroes in the Second Judicial District of Carroll County have seen fit to qualify—or even attempt to qualify—thus, there are no Negroes therein eligible to be called for jury duty. Thus, there were at the time of Goldsby's indictment and trial, and there are now, no Negroes therein eligible to be called for jury duty. And surely this voluntary abstinence of Negroes from attempting to so qualify cannot be held to violate Goldsby's constitutional rights.

The fact is that this Court and other federal and state courts, several of which are erroneously relied upon by said Court of Appeals as the basis for its decision complained of, have invariably held that a member of a particular class was denied his constitutional rights in a jury trial only where there were members of the defendant's class qualified for jury service—that is, until the decision of the Court of Appeals in the instant case. Hence, said decision sought to be reviewed flies in the face of the established law on the subject which has been

consistently followed by decisions of this Court, lower federal courts and state courts—with the one exception here complained of.

While we take issue with respondent's argument under Proposition II of his said brief to the effect that the decision of the Court of Appeals here complained of is not a conflicting decision, we agree with the following statement by the respondent in the heading under Proposition III of his said brief: "The questions which petitioner raises are answered by decisions of this Court . . ." But we submit that that statement should be completed by adding that the decision of the Court of Appeals is in direct conflict with the answers given by this Court, this being a "special and important reason" for the granting of the writ of certiorari herein.

Respondent concludes his brief by stating that if the decision complained of will grant to the respondent and to all other members of the Negro race absolute immunity to prosecution in the court in which the respondent was tried, the "officials of the State of Mississippi have adequate means within their power to avoid the calamity which this contention suggests." How might this calamity be avoided? Does respondent contemplate that Negroes should be coerced against their will to register to vote and to meet the other requirements for jury service? Such coercion, as respondent's counsel well know, would be unlawful on its face and could not be condoned.

Respondent states that the judgment of the Court of Appeals did not go far enough and that he has filed a petition for cross-writ of certiorari. We are convinced that respondent is in error in this regard, and we are

filing a brief in opposition to his said petition for cross-writ of certiorari.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of Mississippi

J. R. GRIFFIN
Assistant Attorney General

JOHN H. PRICE, JR.
Assistant Attorney General

BARNETT, JONES
& MONTGOMERY
Of Counsel

ROSS R. BARNETT
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Joe T. Patterson, one of the attorneys of record for the petitioner in the above cause, hereby certify that I have this day served the foregoing reply brief, by mailing three copies thereof, properly addressed, with United States Air Mail postage prepaid, to George N. Leighton, 123 West Madison Street, Chicago 2, Illinois, he being of counsel for the respondent.

This the ..... day of August, 1959.